

Testimony

of

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on

Federal Contracting and Procurement

to

The Senate Small Business Committee

Wednesday, July 12, 2006
Russell Senate Office Building
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EXECUTIVE SUMMARY

Over the years, there have been many good laws passed in recognition and support of those that served in our Nations Armed Forces. Most of the major ones dealt with Health, Medical Care, Education, Rehabilitation, Homelessness, Housing, Dependents, and Burial Rights. But it wasn't until 1999, that Congress found that: (quote from the Findings Section of PL 106-50)

- (1) "Veterans of the United States Armed Forces have been and continue to be vital to the small business enterprises of the United States;
- (2) In serving the United States, veterans often faced great risks to preserve the American dream of freedom and prosperity;
- (3) The United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises;
- (4) Medical advances and new medical technologies have made it possible for service-disabled veterans to play a much more active role in the formation and expansion of small business enterprises in the United States; and
- (5) The United States must provide additional assistance and support to veterans to better equip them to form and expand small business enterprises, thereby enabling them to realize the American dream that they fought to protect."

While the framers of PL 106-50 did a good job of setting up the program in 1999 to assist all veterans interested in starting or expanding their own small businesses, it wasn't until the Veterans Benefits Act of 2003, Section 308 that a Federal Procurement Program for Veterans was created. Under Section 308, contracting officers were given the authority to restrict competition or make sole source awards for procurements to service disabled veteran owned businesses (SDVOBs).

But even with both laws on the books, it took an Executive Order from the President, #13-360 and follow up letters this year from Senator Kerry's office via the Senate Small Business Committee to get the agencies to implement the laws and do more to create procurement opportunities for SDVOBs.

Agencies and large Prime contractors have yet to reach their 3% mandatory goals for procuring goods and services from SDVOBs. The biggest impediment to increasing contracts to SDVOBs is the "Rule of Two." The Rule of Two is a major impediment to SDVOB success under PL 106-50, 108-183, and EO 13-360, and negatively effects the SDVOB community. Contracting officers are frustrated with the difficulty of awarding procurements directly to SDVOBs. They would like greater discretion in selecting SDVOBs to meet their agency's goals.

INTRO:

Good Morning Ranking Member, Chairman Snowe, Senator Kerry, and other Members of the Committee:

Let me first thank you for the opportunity to come before you today to share some of the collective views of thousands of Veterans and Service Disabled Veteran Business Owners, veterans who served with honor, and many who received distinguished honors for displaying valor and courage during their period of military service for this country. Though my time of service was many years ago, as a veteran of the US Air Force with the 66th Strategic Missile Squadron, I still have a very vivid memory of the military experience.

Over the past 15 years that I have been assisting Veterans, I had never quite thought about the true difference between serving in the military versus working as a civilian until the other day while, serving in my capacity as a Commissioner of the Veterans Disability Benefits Commission, I witnessed a presentation by a Veteran who pointed out that members of the military can be called to action wherever the need arises. And that action could be a hostile action which puts you in harms way. And you can not disobey the order to proceed without serious consequence of liberty and/or life.

For those that swore an oath to protect our freedoms here in America, from enemies both domestic and abroad, to what do we owe them for their service? And especially those that returned with loss of limb(s), mentally disturbed, or other disabilities. Though I was fortunate and was not commanded to report to a combat zone, I do share in the experience of many men and women who survived it. I still remind myself, “ If not for the grace of God go I.”

PL 106-50, the Veterans Entrepreneurship and Small Business Development Act of 1999

Over the years, there have been many good laws passed in recognition and support of those that served. Most of the major ones dealt with Health, Medical Care, Education, Rehabilitation, Homelessness, Housing, Dependents, and Burial Rights. But it wasn't until 1999, that Congress found that: (quoted from PL 106-50, Findings Section)

- (1) Veterans of the United States Armed Forces have been and continue to be vital to the small business enterprises of the United States;
- (2) In serving the United States, veterans often faced great risks to preserve the American dream of freedom and prosperity;
- (3) The United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises.
- (4) Medical advances and new medical technologies have made it possible for service-disabled veterans to play a much more active role in the formation and expansion of small business enterprises in the United States; and

(5) The United States must provide additional assistance and support to veterans to better equip them to form and expand small business enterprises, thereby enabling them to realize the American dream that they fought to protect.

As a result of these findings, which by the way, were brought to light by the Task Force for Veterans Entrepreneurship, including many Veteran Service Organizations, and members of the veterans community, Congress unanimously passed the Veterans Entrepreneurship and Small Business Development Act of 1999, better known as Public Law 106-50.

As we now know, that single piece of legislation offered a remedy to the findings and created the framework for Federal Contracting Assistance for Veteran Business Owners. The law directed that – the SBA, including the Small Business Development Centers and the Senior Core of Retired Executives, and the Departments of Labor and Veterans Affairs, do more to assist veterans with starting or expanding their own small businesses. It also called for the creation of new programs and institutions, i.e., the Center for Veterans Enterprise, the Office of Veterans Business Development, and the National Veterans Business Development Corporation.

Congress also went a step further in the legislation by calling for the creation of a Veterans Advisory Board to the SBA, and required that a goal be set for federal agencies and large prime contractors to procure a minimum of 3% of their goods and services from service disabled veteran owned businesses.

Having been a member of the Task Force for Veterans Entrepreneurship since 1999, to oversee the creation and implementation of PL 106-50, I would have to say that the members of Congress, veterans, and others who put forth the details should be commended. Its a well-rounded plan that if implemented as intended, would get veterans across the nation into the mainstream of owning a business, entrepreneurship, and thereby building capacity to employ other veterans and disabled veterans.

However, as we approach the 7th year anniversary, many members of the veterans business community are still hopeful that the ideals envisioned by the framers of PL 106-50 will become a reality. While the VA and its Center for Veterans Enterprise have been progressing in its data collection and assistance efforts, the SBA seems to be declining in its support. There has seemingly been very little resources directed toward assisting veterans as evidenced by the creation of an SBA Office for Veteran Business Owners with a staff of one, which only lasted for about 1 year.

The SBA Office of Veterans Business Development which was created under the legislation along with the position of an Associate Administrator has increased its headquarters staff size but has been given limited resources to operate four veteran business outreach centers and to provide assistance to veteran business owners with federal contracting, though efforts have been made to educate the veterans of the Guard and Reserves. Even the National Veterans Business Development Corporation, aka, TVC, with its more than \$12 million in appropriations, four leadership changes, and a few semi-veteran business resource centers, is still struggling to create an identity and make a difference in the lives of veteran business owners.

From the perspective of the federal contracting community, the OSDBUs, the Contracting Officers, and the Procurement Officials, it was just viewed as another program with a "nice idea." When veteran business owners began to pursue federal contracts they were told all too often, "PL 106-50 is just a goal. There are no teeth in it. We still don't have the mandatory authority to set contracts aside just for veterans."

So the Task Force for Veterans Entrepreneurship began to call for additional legislation to correct the apparent shortcomings referred to by federal contracting officials.

Public Law 108-183, the Veterans Benefits Act of 2003, Section 308

As a result, corrective language was drafted and inserted into the Veterans Benefits Act of 2003 under Section 308, now PL 108-183. That language called for the creation of a Veterans Procurement Program and made it "mandatory" that the Federal Government and its large Primes procure a minimum of 3% of all of its goods and services from Service Disabled Veteran Owned Businesses. Yet even more than 2 years after the passage of that legislation, agencies are still complaining about meeting the goal and there has still been very little assistance for veteran or service disabled veteran business owners seeking to enter the federal marketplace.

Executive Order 13-360

In the winter of 2004, President Bush issued an Executive Order, 13-360, via the Office of Federal Procurement Policy and the SBA, directing federal agencies to develop and implement a strategic plan to increase contracting opportunities for service disabled veteran owned businesses so that they could begin to receive the intended benefits of PL 108-183 and PL 106-50. After several months of delay, many agencies began to develop and make public their strategic plans, but they never reported on their progress at year's end. It wasn't until this year that many of the agencies did report. But many of them would point out that: "even though PL 108-183 created a mandatory requirement to contract with service disabled veteran owned businesses, it did not provide any funding to assist with the development of veteran businesses."

So what's really preventing veteran business owners from realizing the dream of owning their own small businesses? What more can the federal government do to assist them? What can this Congress do to improve what has been done already? Here's some of the recommendations and requests, that might make the difference:

Recommendations to Achieve the Goals – Legislative Fixes

1. Eliminate the "Rule of Two." The Rule of Two as introduced under PL 108-183 is contained in Part 19 FAR, and the Code of Federal Regulations (CFR) 13 CFR, Part 125. The Rule of Two states if a contracting officer knows of two or more SDVOBs that can do the work, then the requirement must be competed and a sole source award cannot be made. If sole source cannot be made, then the requirement may be competed among SDVOBs only under restricted competition.

Meeting with and talking with Federal Government contracting officers, we have found that they are often under pressure to get certain requirements awarded quickly, and although there is a SDVOB that can do the job, they routinely go to 8(a) sole source, since the Rule of Two will not allow them to deal with the SDVOB on a sole source basis. In these cases, the Government does not have time to even consider restricted competition among SDVOBs because of time factors. Thus, the SDVOB suffers and the government agency loses an opportunity to add to its 3% Goal under the law.

SBA 8(a) Firms have no such Rule and are awarded single sole source awards for their self marketing activities under part 19 FAR. For SBA 8(a) Firms there can be a multitude of 8(a) Firms and the Contracting Officer can still elect to sole source to just one without competitive procurement activity.

2. Create a level playing field for veteran business owners as with the 8a and Hubzone programs. The use of “May” for SDVOBs should be changed to “Shall” as with 8a and Hubzone owners. The order of priority for contracting preferences among the three groups should be equal. Our SDVOB community across the Nation wants sole source parity with 8(a) firms so our SDVOB’s can reap the benefits of their hard work and self-marketing activities.

3. Strengthen the SDVOB program by increasing contract awards, resources, and support without including SDVOBs into the 8a program. The 8a program was created to help alleviate the more than 100 years of wrongful discrimination and exclusion of minorities from the full benefits of American society, including the federal marketplace. The SDVOB program is intended to be inclusive of any American who served in this country’s armed forces, guard or reserves. The SDVOB program should retain its own identity for “those who have borne the battle.”

4. Alleviate barriers to discrimination and provide more resources to expand and develop the pool of capable and qualified veteran and service disabled veteran business owners. And as a result – more employment opportunities will be created for veterans, their families and their communities. Provide better oversight and frequent monitoring of agency strategic plans for implementing veterans’ business legislation, in accordance with Executive Order 13-360. It wasn’t until Senator Kerry of this Committee sent letters this year directly to agencies inquiring as to the existence of their progress reports and revised plans did any of the agencies comply with the Order.

5. Small Business Subcontracting Plans submitted by large companies (Primes) should be monitored more closely. Liquidated damages, elimination of future contracts should be imposed for those companies that fail to demonstrate a good faith effort.

6. Extend the provisions of H.R. 3082 which gives direct responsibility to the Dept. of Veterans Affairs to continue the obligation to rehabilitate those veterans that sacrificed for our Nations security and prosperity, by amending the Small Business Act to include a section entitled, “The Service Disabled Veteran Comprehensive Eligibility” amendment.

7. Provide a Price Evaluation Preference of 10% for SDVOBs in acquisitions conducted using full and open competition.
8. Allow the Department of Veterans Affairs to establish a certification process for SDVOBs. The VA and DOD are the only two government agencies authorized to grant service-connected disability status to veterans. Thus it would be quite natural for these agencies to issue a letter indicating a veterans' disability status. Absent an official certifying letter, the self-certification system that is currently in place, if SDVOB contract awardees are challenged, can be time consuming and an unnecessary burden.
9. Increased use of PMRs – CMRs, SBA Prime Contracts Program, Subcontracting Assistance Program.
10. Increase the government-wide small business goals from 23% to 28%.

(For more details on suggested FAR Rule changes, refer to Attachment 1)

Thank you and this concludes my testimony.

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SUGGESTED CHANGES TO THE FAR

For reference FAR 19.5 is "Small Business"; 19.8 is "8(a)"; 19.13 is "HUBzone"; and 19.14 is "SDVOSB."

The items below are the specific words in FAR 19 that I believe have to be addresses by congress. Statutory changes have to tell the FAR Council and SBA that this is the end result we need.

Delete FAR 19.800 General, subparagraph (e). Change subparagraph (f) designation to "(e)". FAR 19.800 General, subparagraph (e) now reads:

"(e) Before deciding to set aside an acquisition in accordance with subpart 19.5, 19.13, or 19.14 the contracting officer should review the acquisition for offering under the 8(a) Program. If the acquisition is offered to the SBA, SBA regulations (13 CFR 126.607(b)) give first priority to HUBZone 8(a) concerns."

At FAR 19.1407 insert "(a)" at the beginning of the paragraph. Change FAR 19.1407 designation to 19.1408. At the new 19.1408 Insert paragraph (b);

"(b) The contracting officer shall insert the clause at 52.219-28, Notice of Price Evaluation Preference for SDVO Small Business Concerns, in solicitations and contracts for acquisitions conducted using full and open competition. The clause shall not be used in acquisitions that to do not exceed the simplified acquisition threshold."

At FAR 19.1407 insert the following:

19.1407 – Price Evaluation Preference for Service-Disabled Veteran Owned Small Business Concerns.

(a) The price evaluation preference for SDVO small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

- (1) In acquisitions expected to be less than or equal to the simplified acquisition threshold;
- (2) Where price is not a selection factor so that a price evaluation preference would not be considered (*e.g.*, Architect/Engineer acquisitions);
- (3) Where all fair and reasonable offers are accepted (*e.g.*, the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from SDVO small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

- (1) Offers from SDVO small business concerns that have not waived the evaluation preference;
- (2) Otherwise successful offers from small business concerns;
- (3) Otherwise successful offers of eligible products under the Trade Agreements Act when the acquisition equals or exceeds the dollar threshold in Subpart 25.4; and

(4) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government (see agency supplement).

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government facilities, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) A concern that is both a SDVO small business concern and a small disadvantaged business concern shall receive the benefit of both the SDVO small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see Subpart 19.11). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

(e) In the event that a SDVO small business concern and a HUBZone small business concern have submitted a proposal for the full and open competition subparagraph (c) of this section will apply to both the SDVO small business concern and a HUBZone small business concern."

After FAR 52.219-27, Insert:

52.219-28 – Notice of Price Evaluation Preference for SDVO Small Business Concerns.

As prescribed in 19.1408(b), insert the following clause:

Notice of Price Evaluation for SDVO Small Business Concerns (Jan 1999)

(a) *Definition.* SDVO small business concern, as used in this clause, means a small business concern owned and controlled by service-disabled veterans.

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from SDVO small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a SDVO small business concern and a small disadvantaged business concern will receive the benefit of both the SDVO small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR

clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A SDVO small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offer elects to waive the evaluation preference.

(d) *Agreement.* A SDVO small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other SDVO small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other SDVO small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other SDVO small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other SDVO small business concerns.

(e) A SDVO joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the SDVO small business participant or participants;

(f) A SDVO small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by SDVO small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

FAR Part 19.1404 Exclusions, (under the Service-Disabled Veteran-Owned Small Business Program) states:

“This subpart does not apply to--

(a) Requirements that can be satisfied through award to--

(1) Federal Prison Industries, Inc. (see Subpart 8.6);

(2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);

(b) Orders under indefinite delivery contracts (see Subpart 16.5);

(c) Orders against Federal Supply Schedules (see Subpart 8.4);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance

under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or

(e) Requirements for commissary or exchange resale items.”

FAR Part 19.1404 Exclusions go far beyond Public Law 108-183. Public Law 108-183 states:

“(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).”

The FAR should not include the additional exclusions in subparagraphs (b), (c), (d) and (e) of FAR Part 19.1404, above. There is nothing in the statute (PL 108-183) that supports these exclusions.

The comments above apply to FAR articles needing changes to ensure that SDVO small business concerns are on the same level of the playing field as the HUBZone and the 8(a) small business concerns.

There is a problem that has existed more than 20 years that continues to rob business from small business. If we look at the dollars used by government agencies to purchase product and services from the General Services Administration Federal Supply Service through Federal Supply Schedules, it is shameful that these dollars ARE NOT part of the small business program. During the past fiscal year federal and state government purchased \$33,571,112,107 through 46 categories of GSA Schedules. All GSA Schedule holders are except from FAR Part 19 (small businesses) mandatory preference programs.

Under FAR Part 8.4 we find:

FAR 8.405-5 Small business.

(a) Although the mandatory preference programs of Part 19 do not apply, orders placed against schedule contracts may be credited toward the ordering activity's small business goals. For purposes of reporting an order placed with a small business schedule contractor, an ordering agency may only take credit if the awardee meets a size standard that corresponds to the work performed. Ordering activities should rely on the small business representations made by schedule contractors at the contract level.

(b) Ordering activities may consider socio-economic status when identifying contractor(s) for consideration or competition for award of an order or BPA. At a minimum, ordering activities should consider, if available, at least one small business, veteran-owned small business, service disabled veteran-owned small business, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). GSA Advantage! and Schedules e-Library at <http://www.gsa.gov/fss> contain information on the small business representations of Schedule contractors.

(c) For orders exceeding the micro-purchase threshold, ordering activities should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

Submitted to Senate Small Business Cmte (12 Jul 06)

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Bio of Joe Wynn, Executive Officer TFVE (Treasurer)

Joe Wynn, an Executive Officer of the Task Force for Veterans Entrepreneurship, an organization comprised of hundreds of veteran business owners and veteran service representatives to advocate and oversee the implementation of legislation and programs intended to create business development and procurement opportunities for veterans and service disabled veterans within the federal marketplace.

In 2004, Joe founded the Veterans Enterprise Training & Services Group (VETS Group), a nonprofit organization, providing entrepreneurial training, employment assistance, and supportive services for veterans interested in starting or expanding their own small businesses. He is now the President and Chief Executive Officer.

Joe continues to serve as a Senior Advisor for the Vietnam Veterans of America, focusing mainly on veterans preference, business development, vocational rehabilitation, employment and training; and as the Legislative Liaison and a lifetime member of the National Association for Black Veterans (NABVETS), a veteran service organization headquartered in Milwaukee, Wisconsin, delivering services to more than 65,000 veterans in various locations across the nation for over 30 years.

Joe formerly assisted the Service Disabled Veterans Business Association with its mission of providing employment and entrepreneurial opportunities for service disabled veterans under the Javits-Wager O'Day Program (JWOD) by identifying procurement contracts for services via partnering arrangements with established business entities. For several years, as Program Manager, he was responsible for the management and oversight of the overall facilities management, operations, and maintenance services for the Dept. of Veterans Affairs.

Joe is currently a (Congressionally appointed) Commissioner on the Veterans Disability Benefits Commission; Chairman of the Armed Services and Veterans Affairs Committee for the Washington DC Branch of the NAACP; a member of the Mayor's Veterans Advisory Board for the District of Columbia; and formerly the Veterans Small Business Advocate for the SBA in the Washington Metro Area.

Military Service: Honorable Discharge from the U. S. Air Force in 1974, with the 66th Strategic Missile Squadron, Ellsworth AFB South Dakota.

Educational Attainment: Under the G.I. Bill, attended the universities of the District of Columbia and Howard. Achieved a Bachelor's degree in Computer Information Systems, a Master's degree in Business, and two years toward a Doctorate in Organizational Communications.

Personal: Joe has continued his lifetime membership at St. George's Episcopal Church in Washington DC, and is married to Margaret E. Wynn. Together they have five children and 7 grandchildren.